



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2013

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2013-22202

Dear Ms. Thornton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508985 (CAO File No. 13PIA0508).

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing criminal investigation. Based on your representation and our review, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Therefore, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

We understand you to assert the basic information is confidential in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Thus, the sheriff's office may not withhold the entirety of the basic information under section 552.101 in conjunction with common-law privacy. However, we find a portion of the basic information, which we have marked, is protected by common-law privacy, and must be withheld under section 552.101 of the Government Code.²

We also understand you to argue that the remaining basic information is confidential under constitutional privacy. Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information

¹As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

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protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review of the remaining basic information, we find none of it is protected under constitutional privacy, and it may not be withheld on that basis.

In summary, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.³ In releasing the basic information, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/tch

Ref: ID# 508985

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Although the requestor is a representative of the Texas Department of Family and Protective Services, she does not indicate she has a right of access to this information under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).